- 1 Make this section a part of the Standard Specifications:
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"SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. Prospective bidders shall be capable of performing the work for which they are bidding.

9 In accordance with HRS Chapter 103D-310, the Department may require 10 any prospective bidder to submit answers to questions contained in the 'Standard Qualification Questionnaire For Prospective Bidders On Public Works Contracts' 11 furnished by the Department, properly executed and notarized, setting forth a 12 complete statement of the experience of such prospective bidder and its 13 14 organization in performing similar work and a statement of the equipment 15 proposed to be used, together with adequate proof of the availability of such 16 equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the prospective bidder is not fully gualified and 17 able to perform the intended work, the Department will, after affording the 18 19 prospective bidder an opportunity to be heard and if still of the opinion that the 20 bidder is not fully qualified to perform the work, refuse to receive or consider any 21 bid offered by the prospective bidder. All information contained in the answers to 22 the questionnaire shall be kept confidential. Questionnaire so submitted shall be 23 returned to the bidders after serving their purpose.

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No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in payments owed to the State or its political subdivisions or is in default as a surety or failure to do faithfully and diligently previous contracts with the State.

32 **102.02 Contents of Proposal Forms.** The Department will furnish
 33 prospective bidders with proposal forms posted in HIePRO stating:

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- (1) The location,
- 37 (2) Description of the proposed work,
- 39 (3) The approximate quantities,
- 41 (4) Items of work to be done or materials to be furnished,
- 43 (5) A schedule of items, and
- 45 (6) The time in which the work shall be completed.
- 46

Papers bound with or attached to the proposal form are part of the
proposal. The bidder shall not detach or alter the papers bound with or attached
to the proposal when the bidder submits its proposal through HlePRO.

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51 Also, the bidder shall consider other documents including the plans and 52 specifications a part of the proposal form whether attached or not.

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102.03 (Unassigned).

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56 **102.04 Estimated Quantities.** The quantities shown in the contract are 57 approximate and are for the comparison of bids only. The actual quantity of work 58 may not correspond with the quantities shown in the contract. The Department 59 will make payment to the Contractor for unit price items in accordance with the 60 contract for only the following:

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(1) Actual quantities of work done and accepted, not the estimated quantities; or

(2) Actual quantities of materials furnished, not the estimated quantities.

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The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items in accordance with Subsection 104.06 - Methods of Price Adjustment.

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102.05 Examination of Contract and Site of Work. The bidder shall
 examine carefully the site of the proposed work and contract before submitting a
 proposal.

By the act of submitting a bid for the proposed contract, the bidder
warrants that:

(1) The bidder and its Subcontractors have reviewed the contract
 documents and found them free from ambiguities and sufficient for the
 purpose intended;

- 85 **(2)** The bidder and its workers, employees and subcontractors have 86 the skills and experience in the type of work required by the contract 87 documents bid upon;
- 89 (3) Neither the bidder nor its employees, agents, suppliers or subcontractors have relied upon verbal representations from the Department, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and

93 The basis for the bid figure are solely on the construction contract (4) 94 documents. 95 96 Also, the bidder warrants that the bidder has examined the site of the 97 work. From its investigations, the bidder acknowledges satisfaction on: 98 99 The nature and location of the work; (1) 100 101 (2) The character, quality, and quantity of materials; 102 103 (3) The difficulties to be encountered: and 104 105 (4) The kind and amount of equipment and other facilities needed; 106 107 Subsurface information or hydrographic survey data furnished are for the 108 bidders' convenience only. The data and information furnished are the product of the Department's interpretation gathered in investigations made at the specific 109 locations. These conditions may not be typical of conditions at other locations 110 within the project area or that such conditions remain unchanged. 111 Also. conditions found at the time of the subsurface explorations may not be the same 112 The bidder shall be solely responsible for 113 conditions when work starts. 114 assumptions, deductions, or conclusions the bidder may derive from the 115 subsurface information or data furnished. 116 If the Engineer determines that the natural conditions differ from that 117 originally anticipated or contemplated by the Contractor in the items of 118 excavation, the State may treat the difference in natural conditions, as falling 119 within the meaning of Subsection 104.02 - Changes. 120 121 122 **Preparation of Proposal.** The submittal of its proposal shall be on 102.06 forms furnished by the Department. The bidder shall specify in words or figures: 123 124 125 (1) A unit price for each pay item with a quantity given; 126 127 (2) The products of the respective unit prices and quantities 128 129 (3) The lump sum amount; and 130 131 (4) The total amount of the proposal obtained by adding the amounts of the several items. 132 133 134 The words and figures shall be in ink or typed. If a discrepancy occurs between the prices written in words and those written in figures, the prices written 135 in words shall govern. 136 137

When an item in the proposal contains an option to be made, the bidder
shall choose in accordance with the contract for that particular item.
Determination of an option will not permit the Contractor to choose again.

142 The bidder shall sign the proposal properly in ink. A duly authorized 143 representatives of the bidder or by an agent of the bidder legally qualified and 144 acceptable to the Department shall sign, including one or more partners of the 145 bidder and one or more representatives of each entity comprising a joint venture. 146

When an agent, other than the officer(s) of a corporation authorized to sign contracts for the corporation or a partner of a partnership, signs the proposals, a 'Power of Attorney' shall be on file with the Department or submitted with the proposal. Otherwise, the Department will reject the proposal as irregular and unauthorized.

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153 The bidder shall submit acceptable evidence of the authority of the 154 partner, member(s) or officer(s) to sign for the partnership, joint venture, or 155 corporation respectively with the proposal. Otherwise, the Department will reject 156 the proposal as irregular and unauthorized.

- 158 **102.07 Irregular Proposals.** The Department may consider proposals 159 irregular and may reject the proposals for the following reasons:
- 161 **(1)** The proposal is a form not furnished by the Department, altered, or detached;
- 164 **(2)** The proposal contains unauthorized additions, conditions, or 165 alternates. Also, the proposal contains irregularities that may tend to 166 make the proposal incomplete, indefinite, or ambiguous to its meaning; 167
- 168 **(3)** The bidder adds provisions reserving the right to accept or reject an award. Also, the bidder adds provisions into a contract before an award; 170
- (4) The proposal does not contain a unit price for each pay item listed
 except authorized optional pay items; and
- 174 (5) Prices for some items are out of proportion to the prices for other
 175 items.
 176
- (6) If in the opinion of the Director, the bidder and its listed
 subcontractors do not have the Contactor's licenses or combination of
 Contractor's licenses necessary to complete the work.

181 Where the prospective bidder is bidding on multiple projects 182 simultaneously and the proposal limits the maximum gross amount of awards 183 that the bidder can accept at one bid letting, the proposal is not irregular if the 184 limit on the gross amount of awards is clear, and the Department selects the 185 awards that can be given. 186

187 **Proposal Guaranty.** The Department will not consider a proposal of 102.08 188 \$25,000 or more unless accompanied by:

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217 218 (1) A deposit of legal tender; or

192 A valid surety bid bond, underwritten by a company licensed to (2) 193 issue bonds in the State of Hawaii, in the form and composed, 194 substantially, with the same language as provided herewith and signed by both parties; or 195

- 197 A certificate of deposit, share certificate, cashier's check, (3) treasurer's check, teller's check, or official check drawn by, or a certified 198 199 check accepted by and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit 200 Insurance Corporation (FDIC) or the National Credit Union Administration 201 202 (NCUA).
 - The bidder may use these instruments only to a maximum of (a) \$100,000.
- 207 (b) If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued 208 209 by different financial institutions shall be acceptable.
- The instrument shall be made payable at sight to the (C) 212 Department.
 - Proposal Guaranty listed in (1) and (3) shall be in its original (d) form, and shall be received at the Contracts Office, Department of Transportation. 869 Punchbowl Street. Honolulu. Hawaii 96813 before the bid deadline.
- 219 In accordance with HRS Chapter 103D-323, the above shall be in a sum 220 not less than 5% of the amount bid.
- 221

222 102.09 Delivery of Proposal. The bidder shall submit the proposal in HIePRO. Bids received after said due date and time shall not be considered. 223 224 Original bid documents do not have to be submitted. Award will be made based 225 on proposals submitted in HIePRO.

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or
 revise a proposal after the bidder submits the proposal in HIePRO. Withdrawal
 or revision of proposal must be completed before the time set for the receiving of
 bids.

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232 **102.11 Public Opening of Proposals.** Not applicable.

102.12 Disqualification of Bidders. The Department may disqualify a bidder and reject its proposal for the following reasons:

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- (1) Submittal of more than one proposal whether under the same or different name.
- (2) Evidence of collusion among bidders. The Department will not
 recognize participants in collusion as bidders for any future work of the
 Department until such participants are reinstated as qualified bidders.
- 244 (3) Lack of proposal guaranty.
- 246 (4) Submittal of an unsigned or improperly signed proposal.
- 248 **(5)** Submittal of a proposal without a listing of subcontractors or containing only a partial or incomplete listing of subcontractors.
- (6) Submittal of an irregular proposal in accordance with Subsection
 102.07 Irregular Proposals.
- 254 (7) Evidence of assistance from a person who has been an employee
 255 of the agency within the preceding two years and who participated while in
 256 State office or employment in the matter with which the contract is directly
 257 concerned, pursuant to HRS Chapter 84-15.
- 259 (8) Suspended or debarred in accordance with HRS Chapter 104-25.
- 261 (9) Failure to complete the prequalification questionnaire, if applicable.
- 263 (10) Failure to attend the mandatory pre-bid meeting, if applicable.
- 264
 265 **102.13** Material Guaranty. The successful bidder may be required to furnish
 a statement of the composition, origin, manufacture of materials, and samples.
 267
- 102.14 Substitution of Materials and Equipment Before Bid Opening. See
 Subsection 106.13 for Substitution Of Materials and Equipment After Bid
 Opening.
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272 General. When brand names of materials or equipment are (A) 273 specified in the contract documents, they are to indicate a quality, style, 274 appearance, or performance and not to limit competition. The bidder shall 275 base its bid on one of the specified brand names unless alternate brands are gualified as equal or better in an addendum. Qualification of such 276 277 proposed alternate brands shall be submitted via email to the Contact 278 person listed in HIePRO for the solicitation and also post a question in 279 HIePRO under the guestion/answer tab referencing the email with the The request must be posted in HIePRO no later than 14 280 reauest. 281 calendar days before the bid opening date, not including the bid opening 282 date.

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An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.17 – Addenda.

287 Statement of Variances. The statement of variances must list all **(B)** 288 features of the proposed substitution that differ from the contract 289 documents and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly 290 291 marked showing make, model, size, options, and any other features requested by the Engineer and must include sufficient evidence to 292 293 evaluate each feature listed as a variance. A request will be denied if 294 submitted without sufficient evidence. If after installing the substituted 295 product, an unlisted variance is discovered, the Contractor shall 296 immediately replace the product with a specified product at no increase in 297 contract price and contract time.

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(C) Substitution Denial. Any substitution request not complying with the above requirements will be denied.

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5 Bid Adjustment.

304 (A) **Preferences for Apprenticeship Programs.** In accordance with ACT 17, SLH 2009 - Apprenticeship Program and the Bipartisan 305 306 Infrastructure Law Section 25019(a), a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised 307 Statutes (HRS) Section 103-55.6 may be applied to the bidder's price for 308 evaluation purposes. These procedures apply to public works projects 309 with an estimated cost of \$250,000 or more and entered into under the 310 provisions of HRS Chapter 103. 311 312

- 313 The following provisions apply to this Apprenticeship Program.
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 (1)
 Definitions.

317	(a) "Apprenticeable trade", HRS Section 103-55.6 (c),
318	shall have the same meaning as 'apprenticeable occupation'
319	pursuant to Hawaii Administrative Rules (HAR) Section 30-
320	1-5.
321	
322	(b) "Department" means the department of labor and
323	industrial relations.
323	
324	(a) "Director" means the director of labor and industrial
	(c) "Director" means the director of labor and industrial
326	relations.
327	
328	(d) "Employ" means the employment of a person in an
329	employer-employee relations.
330	
331	(e) "Governmental body" means as defined in HRS
332	Section 103D-104.
333	
334	(f) "Party to an apprenticeship agreement" means party
335	to a registered apprenticeship program with the department
336	of labor and industrial relations.
337	
338	(g) "Preference" means the 5% by which the qualified
339	bidder's offer amount would be decreased for evaluation
340	purposes.
340	purposes.
342	(h) "Public work" shall be as defined in HRS Section 104-
343	2 and HAR Section 12-22-1.
344	
345	(i) "Registered apprenticeship program" means a
346	construction trade program approved by the department
347	pursuant to HAR Section 12-30-1 and Section 12-30-4.
348	
349	(j) "Sponsor" means an operator of an apprenticeship
350	program and in whose name the program is approved and
351	registered with the department of labor and industrial
352	relations pursuant to HAR Section 12-30-1.
353	
354	(k) Offeror – Entity/bidder submitting a proposal to
355	undertake a project.
356	
357	(I) Procurement Officer – Director of Transportation or
358	his authorized representative.
359	
360 (2	2) Qualification Procedures.
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501	

362 363 364 365 366 367	an app at the the bio	time the	der seeking the preference must be a party to ship agreement registered with the department e offer is made for each apprenticeable trade employ to construct the public works projects offer is being made.
368 369 370 371			The apprenticeship agreement shall be ed and conform to the requirements of HRS r 372.
372 373 374 375			Subcontractors do not have to be a party to an iceship agreement for the bidder to obtain the nce.
376 377 378 379		in its e	The bidder is not required to have apprentices mploy at the time of submittal of an offer to for the preference.
380 381	(b)	The dep	partment shall:
382 383 384 385		trades i	Develop and maintain a list of construction in registered apprenticeship programs which in to HRS Chapter 372; and
385 386 387 388 389		amendn	Electronically post the list; including any ments, on the department website abor.hawaii.gov).
389 390 391 392 393	require	ements	is responsible to comply with all submission for registration of its apprenticeship program ting a preference.
393 394 395 396 397		spective	shall provide a certification by the sponsor of registered apprenticeship programs covering ade(s) for the public works project.
398 399	(e) include		ation Form 1 issued by the department shall
400 401 402		1. 0	Contractor information;
402 403 404		2 . S	Solicitation reference;
404 405 406		3 . T	Frade(s);
407		4. C	Date and name of apprenticeship program;

4085.Signature of authorized training coordinator or training trust fund administrator certifying that the program is registered with the department;411econtractor is a participant in the program, and that the program is registered with the department;4126.Contract information for sponsor's authorized representative signing the form;4137.Number of apprentices encolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.423(3)Solicitation Procedures.424(3)Solicitation Procedures.425(a)If the NTB indicates that this project is covered by this preference, and the offer is less than \$250,000 this preference will still be applicable in determining the lowest bidder.431(b)A claim for this preference must include the following:4331.Allow bidder seeking to claim the preference to state the trades the bidder will employ to perform the work;4342.For each trade to be employed to perform the work;4433.The Certification Form 1 shall be authorized by an apprenticeship sponsor of the department's list of registered apprenticeship sponsor; and4444444454454.4464.4474.4484.4494.4494.451the completed Certification Form				
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454		(c) Upon receiving <i>Certification Form 1</i> , the procurement
455		officer will verify with the department that the apprenticeship
456		program is on the list of apprenticeship programs registered
457		with the department. If the programs are not confirmed by
458		the department, the bidder will not qualify for the preference.
		the department, the bidder will not quality for the preference.
459		
460	(4)	Evaluation and Contract Award.
461		
462		(a) If the bidder certifies participation in an apprenticeship
463		program for each trade which will be employed by the bidder
464		for the project, the procurement officer shall apply the
465		preference and decrease the bidder's total bid amount by
466		five per cent (5%) for evaluation purposes.
467		
468		(b) Should the bidder qualify for other statutory
469		preferences (for example, Hawaii products), all applicable
470		preferences shall be applied to the bidder's price.
471		
472		(c) The contract amount shall be the original offer
473		amount, exclusive of any preference; the preference is only
474		for evaluation purposes.
475		
476		(d) Any claims challenging a bidder's representation that
477		the bidder is a participant in an apprenticeship program(s) as
478		claimed, shall be submitted to the procurement officer. The
479		procurement officer will refer the challenge to the department
480		
		of labor and industrial relations who shall investigate any
481		such claims and shall make a determination.
482		
483	(5)	Contract Administration.
484		
485		(a) For the duration of a contract awarded utilizing the
486		apprenticeship preference, the contractor shall certify each
487		month that work is being conducted on the project, that it
488		continues to be a participant in the relevant apprenticeship
489		program for each trade it employs.
490		1 5
491		(b) Monthly certification shall be made on <i>Monthly</i>
492		<i>Certification Form</i> 2 prepared and made available by the
492		
		department, be a signed original by the respective
494		apprenticeship program sponsors' authorized official, and
495		submitted by the contractor with its monthly payment
496		requests.
497		

498 Should the contractor fail or refuse to submit its (C) 499 monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered 500 apprenticeship agreement for each apprenticeable trades 501 the contractor employs, or will employ, the contractor will be 502 503 subject to the following sanctions: 504 Withholding of the requested payment until the 505 1. 506 required form(s) are submitted; 507 508 2. Temporary or permanent cessation of work on the project, without recourse to breach of contract 509 claims by the contractor; provided the agency shall be 510 511 entitled to restitution for nonperformance or liquidated 512 damages claims; or 513 514 3. Proceed to debar or suspend pursuant to HRS 515 Section 103D-702. 516 517 (d) If events such as "acts of God," acts of a public enemy, acts of the State or any other governmental body in 518 519 its sovereign or contractual capacity, fires, floods, epidemics, 520 freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting 521 522 the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and 523 expeditiously complies with the certification process when 524 the event is over. 525 526 527 102.16 Certification for Safety and Health Program for Bids in excess of **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by 528 529 signing and submitting this proposal, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date 530 531 for this project. Details of the requirements of this plan may be obtained from the 532 State Department of Labor and Industrial Relations, Occupational Safety and 533 Health Division (HIOSH). 534 535 102.17 Addenda issued shall become part of the contract Addenda. documents. Addenda to the bid documents will be provided to all prospective 536

- bidders via HIePRO. Each addendum shall be an addition to the contract documents. The terms and requirements of the bid documents (i.e., drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum."
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- 542 543

END OF SECTION 102